



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

ELP

Docket No. 3762-99

19 May 2000

[REDACTED]

Dear [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of Title 10, United States Code, Section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice.

The Board found that you enlisted in the Navy on 30 October 1996 for four years as an SN (E-3). You also extended your enlistment for an additional period of 24 months in exchange for training in the diver program and accelerated promotion to pay grade E-4. At the time of your enlistment, you were 22 years of age, had completed 15 years of formal education, and had attained test scores which placed you in Mental Group I.

The record reflects that you served without incident until 30 July 1997 when you received nonjudicial punishment (NJP) for a 37 day period of unauthorized absence. Punishment imposed was a reduction in rate to SA and 30 days of restriction and extra duty. You were dropped from basic underwater demolition training.

On 14 August 1997 you were notified of the command's intention to recommended your discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense as

evidenced by your NJP of 30 July 1997 and breaking restriction on 9 August 1997. You were advised of your procedural rights, declined to consult with counsel, and waived your right to be represented by counsel and present your case to an administrative discharge board (ADB). Thereafter, the commanding officer recommended discharge under other than honorable conditions by reason of misconduct. In his recommendation, he stated that you pled guilty at the NJP and asked at that time to be separated from the Navy with a general discharge. He stated that when you were later informed that you would not be separated but would instead be made available for orders, you violated your restriction for the weekend of 9 August 1997. As a result of your continued misconduct, he recommended that your discharge be approved.

On 4 September 1997, the general court-martial convening authority directed discharge under other than honorable conditions by reason of misconduct due to commission of a serious offense. You were so discharged on 12 September 1997. Block 12a of the DD Form 214 is in error and should show that you entered on active duty on 30 October 1996 vice 5 December 1996.

On 4 June 1998, the Naval Discharge Review Board (NDRB) denied your request for an upgrade of your discharge.

In its review of your application, the Board conducted a careful search of your service record for a mitigating factors which might warrant a recharacterization of your discharge. However, no justification for such a change could be found. The Board noted the issues you presented to the NDRB in 1998 and your contention that had the NDRB looked at the command's muster roster, it would have been clear that you were not UA during your restriction. You also claim that there is information missing in your personnel records, but fail to identify what is missing. The Board also noted that you were older than the average recruit and with 15 years of education and above average intelligence, you possessed all the requisite qualifications to successfully complete your enlistment. The Board concluded that the circumstances of your case were insufficient to warrant recharacterization of your discharge given your NJP for a serious offense and the subsequent offense of breaking restriction, for which you received no disciplinary action. The Board also noted the aggravating factor that you waived your right to an ADB, the one opportunity you had to show why you should be retained or discharged under honorable conditions. At an ADB, you could also have provided evidence to support your claim that you did not break restriction. Your separation was accomplished in compliance with applicable regulations and there is no indication of procedural errors which would have jeopardized your rights. The Board concluded that the discharge was proper and no change

is warranted. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

You are advised that corrections to block 12 of the DD Form 214 are administrative corrections which do not require action by the Board. You may submit a request for correction of your DD Form 214 to the custodian of your record, the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO, 63132.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director